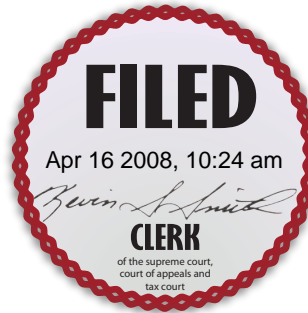


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF T.A.)

A.B., Mother,)

Appellant-Respondent,)

vs.)

ELKHART COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 20A03-0709-JV-430

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause No. 20C01-0703-JT-20

April 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

A.B. (“Mother”) appeals the trial court’s order terminating her parental rights to her son, T.A. (“T.”).

We affirm.

ISSUE

Whether sufficient evidence supports the termination of Mother’s parental rights.

FACTS

The Elkhart County Department of Child Services (“DCS”) substantiated Mother’s neglect as a parent after she gave birth to A., who tested positive for marijuana, in August of 1997. DCS again substantiated Mother’s neglect as to A. in March of 1998. The juvenile court ordered Mother to have no contact with A. and later awarded custody of A. to his father.

DCS substantiated Mother’s parental neglect a third time after she gave birth to T. (herein), on May 12, 2004, who tested positive for cocaine at birth. T. was placed in foster care. On August 29, 2004, T. was placed in Mother’s care under the terms of a service referral agreement. In March of 2006, seventeen months later, DCS was contacted after Mother left T. in the care of a boyfriend and failed to return. T. was again placed in foster care. DCS substantiated neglect of a dependent due to Mother’s abandonment of him and her failure to provide for his significant medical needs. On May 1, 2006, DCS filed a petition alleging that T. was a Child in Need of Services. On May

18, 2006, Mother admitted the allegations, and T. was adjudicated a Child in Need of Services.

On July 25, 2006, Mother gave birth to S., who tested also positive for cocaine. Mother admitted having used drugs and alcohol during her pregnancy. DCS later substantiated neglect with respect to S. Mother was not feeding three-day-old S. and her buttocks were bleeding and raw from not having her diaper changed; S. was also removed from Mother's care.

After T. was adjudicated a CHINS, DCS offered services to Mother, planning to reunite her with T. Mother was offered addiction programs, which she failed to complete and was ultimately discharged for failure to comply with attendance requirements. Mother failed to complete all of her drug screens, and tested positive on two occasions. Mother participated in supervised visitation with T. on a sporadic basis. After October 23, 2006, she failed to appear for visitations with T., and DCS had no information as to her whereabouts. In January of 2007, DCS learned that Mother had been incarcerated since December.

On March 26, 2007, DCS filed a petition for involuntary termination of Mother's parental rights with T.¹ The evidentiary hearing was held on April 26, 2007. Testimony of the above was heard. Gail Eastman testified that she had worked with T. in the "First Steps Program" from his birth until July of 2006. Eastman testified that she engaged T. in therapy for his developmental delays; that her therapy continued when T. was placed

¹ The petition was subsequently amended several times in order to reflect changing allegations as to the identity of T.'s father.

with Mother; that Mother had “inconsistent response[s] to T[.]’s behavior,” (Tr. 58), when he needed consistency; that Mother sometimes disappeared for a week or more; and that Mother “had a lot of needs herself,” (Tr. 56), and found it “difficult to focus . . . on [T.]’s needs.” (Tr. 58). Eastman also testified T. had been additionally diagnosed with fetal alcohol syndrome and had “a tremendous need for a consistent structure.” (Tr. 60). Eastman testified that Mother had never been “fully competent to take care of T[.]” (Tr. 60).

Gail Jantzen, the DCS caseworker for Mother and T. from March of 2006 to October of 2006, testified that during her tenure, Mother failed two different treatment programs. Jantzen further testified that she had observed no improvement in Mother’s parenting abilities; and despite counseling, Mother had failed to provide for T.’s serious medical needs. Jantzen also testified that Mother disappeared twice for a couple of weeks; and her visitation with T. was sporadic and inconsistent.

Carrie Condor, the DCS caseworker for T. from October of 2006 until the time of the hearing, also testified that Mother “would disappear” without notice (Tr. 14); was sporadic in visiting in visiting T.; was unable to abstain from drug use; and had admitted to using drugs and alcohol in the summer of 2006 when she was pregnant with S. Condor introduced evidence establishing that Mother was currently serving a sentence at the Department of Correction, with an earliest possible release date of April 17, 2008. Condor testified Mother was unable to meet her parenting responsibilities; unable to meet T.’s special needs; and, unable to abstain from substance abuse. Condor opined that she did not believe the conditions that led to T.’s removal had a reasonable probability of

being remedied. She further opined that it was in T.'s best interest that Mother's parental rights be terminated "because he's been in and out of foster care his whole life and really needs some stability and some permanency." (Tr. 27). Condor testified that the DCS plan for T. was adoption.

Reva Noel, the CASA for T. since his birth, testified that based on her involvement with T. and Mother, and her review of all the reports, she believed termination was in T.'s best interest. Noel cited Mother's "inability to stay clean and provide for T.'s special needs"; T.'s need for "structure and consistence" and his medical needs – needs that Mother "cannot" provide. (Tr. 79). Noel testified that T. needed "a permanent, stable, consistent home" and that she did "not believe that [he] can wait to see if, possibly [Mother] does make improvements" after her release months later. (Tr. 80).

R.B., T.'s foster mother from May 24 to August 29, 2004, and from March 13 to May 31, 2006, testified that T. was a very active little boy who required a lot of stimulation as well as a lot of structure, and that compliance with his seizure medication regime was very important. Even when she did not have custody of T., R.B. had stayed in touch with and tried to help Mother. R.B. testified that Mother's "disappearing" and drug use concerned her, and that she did not believe Mother was able to provide for T.'s needs. (Tr. 67).

Kim Ingram, T.'s foster mother for the six months before the hearing, testified that T. had a shunt in his brain for the hydrocephalus and required seizure medication twice a day, appointments with various medical specialists, and therapy three times a

week. Ingram echoed the testimony of other witnesses that it was very important for T. to have “a consistent routine.” (Tr. 73).

Mother testified that she believed she could “improve” and “change,” and she finally had “the desire to change and be the mother that [T.] need[ed] in his life.” (Tr. 84). She believed she would be able to parent T. upon release from prison.

The trial court issued a ten-page order² containing detailed findings of fact. It found Mother’s “habitual pattern of conduct” had “inflicted harm” on T., who was “born with disabilities resulting from the use of drugs and alcohol”; that she had “never been able to properly care for” him “because of her struggles with drugs”; and T. was “at continuing risk of harm should the parent child relationship continue.” (App. 13). It concluded that DCS had established “a reasonable probability” that Mother would not be able “to provide [T.] the care” he needed. (App. 14). It found the statutory requirements had been met and ordered that Mother’s parental rights to T. be terminated.

DECISION

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibility. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied* (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*). The purpose of terminating parental rights is not to punish parents but to protect children. *Id.*

² The order addressed not only the termination of Mother’s parental relationship but also that of T.’s legal father and alleged biological father.

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* The parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.*

The appellate court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of the evidence to support the judgment of involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (A) The child has been removed from the parent for at least six (6) months under a dispositional decree; . . .
- (B) There is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) Termination is in the best interests of the child; and
- (D) There is a satisfactory plan for the care and treatment of the child.

Ind. Code §§ 31-35-2-4(b)(2), 31-35-2-8(a).

Mother does not argue that DCS failed to prove that T. had been out of her care for the requisite period of time, or that termination was not in the best interests of T., or that DCS had no satisfactory plan for T.'s care and treatment. Mother argues only that

DCS failed to prove that there was a reasonable probability that a continuation of the parent-child relationship posed a threat to the well-being of the child or that the conditions that resulted in the removal of T.[] from his home would not be remedied.

Mother's Br. at 20. We cannot agree.

We note that inasmuch as the statute reads in the disjunctive, DCS was only required to prove that "the conditions that resulted in the child's removal or the reasons for placement outside of the home will not be remedied." I.C. § 31-35-2-4(b)(2) (emphasis added). Further, with respect to Mother's emphasis on her own testimony expressing her belief that she could improve and change, and would be able to conquer her drug addiction and successfully parent T. upon her release from prison, our review on appeal does not judge the credibility of witnesses. *R.S.*, 774 N.E.2d at 930. We consider "only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom." *Id.* Mother also cites to *Rowlett v. Vanderburgh County Office of Family and Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), wherein we reversed the termination of a father's parental rights. Mother asserts that like Rowlett, the evidence showed that she "had made progress in dealing with her addiction problems," and the trial court should have considered her "improvement" and "progress" rather than her past pattern of conduct. Mother's Br. at 24, 25. *Rowlett's* holding was that "at th[at] point in time," the statutory requisites for terminating the parental relationship had not been satisfied. 841

N.E.2d at 624. Moreover, we find significant factual distinctions in *Rowlett*: the incarcerated father had introduced evidence of significant self-improvement efforts he had undertaken in prison; he had “maintained a relationship with his children while incarcerated” by communicating with them regularly, *id.* at 622; the record established his “great interest in maintaining a parental relationship” with his children, *id.* at 623; and for the preceding three years, Rowlett’s children had not been “in a temporary relationship pending termination of parental rights” but rather in the care of their maternal grandmother, and surrounded by other close relatives, where they were expected to stay. *Id.* at 622. Such evidence was not presented in this proceeding.

The trial court made extensive findings, supported by evidence regarding Mother’s inability to abstain from the use of drugs -- dating before T.’s birth until her incarceration in December of 2006. Mother had been offered numerous opportunities for treatment to overcome her drug addiction, but she failed to make the necessary commitment to succeed. After T. was born, he tested positive for cocaine, a condition that left him developmentally delayed and in need of therapy three times a week. Thus, as the trial court concluded, Mother “permanently impaired” T. by her addiction. (App. 14). Further, T. suffers from hydrocephalus, requiring a shunt to his brain, a seizure disorder that requires a strict medication regime, and fetal alcohol syndrome. Multiple witnesses testified to T.’s particular need for consistency and structure. Yet despite T.’s needs, Mother had a pattern of simply disappearing from his life – for days, even weeks at a time. At the time of the termination hearing shortly before his third birthday, T. had lived sporadically for approximately seventeen months with Mother, and had not seen her for

more than six months. Numerous witnesses, who had attempted to assist Mother in becoming able to parent T., agreed that she had failed to improve and was not able to care for him. DCS presented clear and convincing evidence that Mother was unable to care for T., and the continuation of the parent-child relationship posed a threat to the well-being of the child.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.